IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

WP(C).No. 14256 of 2007(V)

PETITIONERS:

1. **ST. JOHN'S JACOBITE SYRIAN CHURCH, VADAKARA, KOOTHATTUKULAM, REPRESENTED BY ITS TRUSTEES K.I. KURIAKOSE AND SUNNY JOHN.**

2. **P.J.JOSEPH, MANAGER, ST.JOHN'S SYRIAN HIGHER SECONDARY SCHOOL AND T.T.I., VADAKARA, KOOTHATTUKULAM.**

BY ADV. SRI.KRB.KAIMAL (SR.)
SRI.SHAHUL HAMEED MOOPPAN
SRI.B.UNNIKRISHNA KAIMAL

RESPONDENTS:

1. **STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVT. OF KERALA, GENERAL EDUCATION (F) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DIRECTOR OF PUBLIC INSTRUCTIONS, THIRUVANANTHAPURAM.**

3. **THE DISTRICT EDUCATIONAL OFFICER, MUVATTUPUZHA.**

4. **THE VICAR, ST.JOHN'S SYRIAN CHURCH, VADAKARA, KOOTHATTUKULAM, ERNAKULAM DISTRICT.**

5. **SHRI THOMAS C.VARGHESE, NADUCHEMBONTHAYIL, KOOTHATTUKULAM.**

BY ADV. SRI.S.SREEKUMAR
SRI.K.JAJU BABU
BY GOVERNMENT PLEADER SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, ALONG WITH WPC NO.15199 OF 2007 AND CONNECTED CASES THE COURT ON 05/10/2007 DELIVERED THE FOLLOWING:

W.P.(C) NO.14256/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE BYE- LAWS OF THE ST. JOHN'S JACOBITE SYRIAN CHURCH EDUCATIONAL AGENCY.

EXT.P2:- COPY OF THE RELEVANT PORTION OF THE CONSTITUTION OF MALANKARA ORTHODOX SYRIAN SABHA.

EXT.P3:- COPY OF THE RELEVANT PORTION OF THE ORDER OF THE 1ST ADDITIONAL DISTRICT JUDGE, ERNAKULAM IN IA.NOS. 299,300 AND 301/03 IN OS. NO.11/1981 DT. 24.1.04.

EXT.P4:- COPY OF THE REPORT DT. 7.4.04 SUBMITTED BY THE ADVOCATE COMMISSIONER IN IA. NO.300/03 IN OS. NO.11/81 BEFORE THE DISTRICT COURT ERNAKULAM.

EXT.P5:- COPY OF THE APPLICATION FOR CHANGE OF MANAGEMENT SUBMITTED BY THE 2ND PETITIONER TO THE 3RD RESPONDENT TOGETHER WITH ENDORSEMENT OF APPROVAL BY THE 3RD RESPONDENT DT. 4.2.05.

EXT.P6:- COPY OF THE ORDER NO.B4/K.DIS / 10373/05 DT. 28.2.06 ISSUED BY THE 3RD RESPONDENT.

EXT.P7:- COPY OF THE APPLICATION SUBMITTED BY THE 5TH RESPONDENT FOR CHANGE OF MANAGEMENT BEFORE THE 3RD RESPONDENT TOGETHER WITH ORDER NO.A/1/96/3/05/K.DIS DT. 22.4.06 ENDORESED BY THE 3RD RESPONDENT.

EXT.P8:- COPY OF THE ORDER OF THE MUNSIFF'S COURT, KOLENCHERRY IN IA.367/05 IN OS. NO.48/05 DT. 16.12.05.

EXT.P9:- COPY OF THE ORDER OF THE MUNSIFF COURT, KOLENCHERRY IN IA NO.367/05 IN OS. NO.48/05 DT.22.2.06.

EXT.P10:- COPY OF THE APPEAL DT. 25.3.06 FILED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P11:- COPY OF THE APPEAL DT. 9.6.06 FILED BY THE 2ND PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P12:- COPY OF THE COMMON JUDGMENT OF THIS HONOURABLE COURT IN WPC. 14103/06 & 15766/06 DT. 23.6.06.

EXT.P13:- COPY OF THE ORDER NO.ET(4)23761/06/DPI/D.DIS DT. 7.7.06 ISSUED BY THE 2ND RESPONDENT.

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EXT.P14:- COPY OF THE REVISION PETITION DT. 18.7.06 FILED BY THE 5TH RESPONDENT BEFORE THE 1ST RESPONDENT.

EXT.P15:- COPY OF THE ORDER NO.38515/D2/06/G.EDN. DT. 20.7.06 ISSUED BY THE 1ST RESPONDENT.

EXT.P16:- COPY OF THE ORDER DT. 25.8.06.

EXT.P17:- COPY OF THE JUDGMENTOF THIS HONOURABLE COURT IN WPC 23009/06 DT. 20.10.06.

EXT.P18:- COPY OF THE GOVERNMENT ORDER GO.RT NO.1616/07/G.EDN. DT. 11.4.07.

EXT.P19:- COPY OF THE LETTER DT. 14.12.05 SUBMITTED BY THE 2ND PETITIONER TO THE D.E.O. MUVATTUPUZHA.

EXT.P20:- COPY OF THE AFFIDAVIT FILED ON BEHLAF DEFENDANTS 5 TO 22 IN IA. NO.367/05 IN OS. 48/05 BEFORE THE MUNSIFF COURT, KOLENCHERRY.

EXT.P21:- COPY OF THE MINUTES OF the MANAGING COMMITTEE MEETING OF ST.JOHNS YACOBAYA SURIANI CHURCH, VADAKARA HELD ON 14.12.04.

EXT.P22:- COPY OF THE MINUTES OF THE MANAGING COMMITTEE MEETING OF ST.JOHNS YACOBAYA SURIANI CHURCH, VADAKARA HELD ON 9.1.05.

EXT.P23:- COPY OF THE RELEVANT PORTION OF THE CONSTITUTION OF MALANKARA ORTHODOX SYRIAN SABHA.

<u>RESPONDENTS EXHIBITS</u>

EXT.R4(a):- COPY OF THE ORDER IN IA. NO.1991/05 IN OS. NO.11/81 OF DISTRICT COURT.

EXT.PR4(b):- COPY OF THE COMMON ORDER IN IA. 3609/05, 3611/05 AND 3612/05 IN OS. NOP.11/81 OF DISTRICT COURT, ERNAKULAM DT. 5.12.05.

EXT.R4(c):- COPY OF THE NOTICE OF AGENDA.

EXT.R4(d):- COPY OF THE RELEVANT PORTION OF MATHRUBOOMI DAILY DT. 27.11.05.

EXT.R4(e):- COPIES OF THE ANNUAL GENERAL MEETING OF THE PARISH ASSEMBLY OF THE CHURCH.

EXT.R4(f):- COPY OF THE JUDGMENT IN WPC NO.23009/06 DT. 20.10.06.

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EXT.R4(g):- COPY OF THE RELEVANT PORTION OF MALAYALA MANORAMA DAILY DT. 29.11.05.

EXT.R4(h):- COPY OF THE KALPANA NO.217/05 DT. 3.12.05 .

EXT.R4(i):- COPY OF THE MINUTES OF THE MANAGING COMMITTEE HELD ON 4.12.05.

EXT.R4(j):- COPY OF THE KALPANA NO.218/05 DT. 3.12.05.

EXT.R4(k):- COPY OF THE MINUTES OF THE MEETING OF THE SCHOOL BAORD DT. 5.12.05.

EXT.R4(l):- COPY OF THE REPRESENTATION DT. 5.12.05 SUBMITTED BY THE VICAR OF THE CHURCH BEFORE THE 3RD RESPONDENT.

EXT.R5(a):- COPY OF THE ORDER DT. 5.12.05 IN IA. NOS.3609/05, 3611/05, 3612/05, 3856 IN OS. NO.11/81 OF THE ADDL.DISTRICT JUDGE ERNAKULAM.

EXT.R5(b):- COPY OF THE ORDER NO.B4/K.DIS/4124/06 DT. 16.5.07 OF THE 3RD RESPONDENT.

EXT.R5(c):- COPY OF THE ORDER NO.B4/K.DIS /5704/06 DT. 19.5.07 OF THE 3RD RESPONDENT.

/TRUE COPY/

P.S. TO JUDGE

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A.K. Basheer, J.

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14256/07)) as Manager of the schools under the agency is legally valid and unsustainable.

3. WP.14256/07 shall be treated as the leading case and the parties and documents in that case shall be referred to hereinafter unless otherwise indicated.

4. It is the common case of the parties that elections were held to the Church Managing Committee and the School Board in terms of the Church Constitution and the bye-laws of the educational agency on April 4, 2004 as directed by the First Additional District Court, Ernakulam in OS.11/1981. It is also beyond controversy that Sri.P.J.Joseph was elected as the Manager of the two schools under the agency viz., St.John's Syrian Higher Secondary School and the Teachers' Training Institute, Vadakara for the term which started from December 3, 2004.

5. Two members of the Trust viz. Sri. K.I.Kuriakose and Sri.Sunny John claiming to represent “St.John's Jacobite Syrian Church” and Sri. P.J.Joseph have filed WP.12456/07 contending inter alia that no valid or proper election was held either to the Church

Managing Committee or to the School Board in November 2005 as alleged by the Vicar (respondent No.4). It is their further contention that Sri.Thomas C Varghese (respondent No.5) had not been elected as the Manager of the two schools replacing Sri.Joseph as contended by the Vicar. Petitioners further contend that Ext.P18 order issued by the Government approving the appointment of respondent No.5 as Manager is totally illegal and vitiated. Since the election of Sri. Joseph as Manager was for a term of 3 years with effect from December 4, 2004 he is entitled to continue in office till the expiry of his term or till fresh elections are held.

6. Per contra, Sri.Thomas C. Varghese who has preferred WP.13575/07 contends inter alia that he is the duly elected Manager of the schools under the educational agency and his election and appointment had been approved by the controlling officer as provided under the Kerala Education Act and Rules. The Government had considered the case of the rival contestant (Sri.Joseph) and rightly held that the claim put forth by him was unsustainable. It is thus contended by Sri.Thomas C. Varghese that the order of the Government

approving his appointment is liable to be implemented. He prays for an appropriate direction in this regard in his writ petition.

7. The other 3 writ petitions are by a Teacher, a Laboratory Attender and some of the students who got admission to the TTC course. I will refer to these three Writ Petitions a little later.

8. As mentioned earlier, the fact that Sri.Joseph was elected as the Manager of the two schools for the term commencing from December 3, 2004 is not in controversy at all. According to the petitioners the elected Manager is entitled to continue in office for 3 years. Sub clause (3) of Clause 4 of Ext.P1 bye-laws of the educational agency stipulates that the tenure of the School Board shall be 3 years. There is no specific clause in the bye-laws prescribing the tenure of the Manager. But Ext.P2 bye-laws of the Church stipulates that the tenure of the members of the Managing Committee of the Church which elects the members of the School Board shall be for one year. It is also provided in the bye-laws that the Church Committee shall be entitled to remove any of the members of the school Board at any time and elect new members to the Board from the Church Committee. It is also

provided in the bye-laws that the Board can remove the Manager at any time by a majority decision. A perusal of the Constitution of the Church and the bye-laws of the educational agency undoubtedly shows that the tenure of the elected members of the Church Council shall be for one year and that the five members of the School Board who are to be elected from among the members of the Church Committee are liable to be removed from the Board by the Church Committee at any time. It is true that the members of the Board can continue for 3 years if they are not removed by the Church Committee in the meantime. Similarly the elected Manager may be entitled to continue for 3 years if not removed by a majority decision. Thus the Church Committee is the supreme authority which can decide the fate of the members of the Board and the Manager.

9. The case of the Vicar is that elections were held to the Church Committee on November 27, 2005. The newly elected members of the Church Committee had in turn elected 5 members to the School Board except the 2 members to be nominated by the Metropolitan. The newly elected members of the Board had elected Sri.Thomas C Varghese as

the new Manager for the term commencing from December 5, 2005. The appointment of Sri.Thomas C Varghese was communicated to the controlling officer as provided under the bye-laws. The controlling officer in turn had approved the appointment of Sri.Thoams C. Varghese. In the meanwhile, Sri. Joseph had admittedly approached the controlling officer with a request to extend his tenure of managership till March 31, 2006. The said request was turned down by the controlling officer and it was further ordered that the appointment of Sri.Thoams C Varghese was liable to be approved. The said order was later affirmed by the Government in Ext.P18 order.

10. In this context it may be pertinent to note that the two factions had been continuing their legal battle not only before the Additional District Court, Ernakulam but also before the Munsiff's Court, Kolencherry. Some of the members of the group who apparently support the petitioners had obtained an order from the Munsiff's Court (Ext.P8) restraining the Vicar from either renewing or publishing Edavaka Yogam Register before March 31, 2006. Presumably, it was on the strength of the said order that Sri. Joseph had approached the

controlling officer to allow him to continue as Manager till March 31, 2006. Petitioners do not have a case that the Vicar had violated the above order. The very fact that Sri.Joseph had approached the controlling officer to extend his term beyond December 3, 2005 strengthens the case of the Vicar that the newly elected School Board had chosen Sri.Thomas C Varghese as the new Manager.

11. There is yet another aspect of the matter. Ext. P9 is the order issued by the Munsiff's Court Kolencherry in an Interlocutory Application filed by members of the group supporting the petitioners. The learned Munsiff had made it clear that the order interdicting the Vicar from renewing or reconstructing the Edavaka register would not preclude or prohibit him from convening the Edavaka Yogam and holding election as provided under the constitution in order to elect a new Managing Committee which had to assume office on expiry of the term of the previous committee. A perusal of the contentions raised by the petitioners in the Interlocutory Applications as revealed form Ext.P9 order will undoubtedly show that steps had been taken by the Vicar to elect new members of the Church Committee in November

2005.

12. As noticed already there is no dispute that the term of office of the Church Committee is for one year which was due to expire in the first week of December 2005. It is also not in dispute that that the controlling officer had approved the appointment of Sri.Joseph as Manager for one year only, with effect from December 3, 2004. It was obviously therefore that Sri.Joseph had requested the controlling officer to extend his tenure. But the contention of the petitioners is that so long as fresh elections were not held to the Church Committee and the School Board, Sri. Joseph was entitled to continue in office till such time fresh elections were held. This necessarily boils down to the question whether or not elections were held in November, 2005. A perusal of Exts.P8 and P9 orders of the Munsiff's Court in the Interlocutory Applications in OS.48/2005 and the pleadings of the petitioners in their writ petitions (WP.No.14256/07) will undoubtedly show that petitioners were aware that elections were in fact held in November, 2005 as contended by the Vicar. If that be the position, the validity or otherwise of any such election will have to be necessarily

challenged by the petitioners or any other aggrieved party before a civil court.

13. The specific contention of the Vicar is that pursuant to the election held on November 27, 2005, the newly elected members of the Church committee had elected five new members to the School Board and the Board in turn had elected Sri.Thomas C. Varghese as the new Manger. The controlling officer by Ext.P7 order had approved the appointment of Sri.Thomas C Varghese which was later confirmed by the Government in Ext.P18 order.

14. Having carefully perused the impugned order, apart from other materials on record, I do not find any material illegality or irregularity in the conclusions made by the Government in Ext.P18 order. The Government, in my view, was justified in approving the appointment of Sri. Thomas C Varghese as Manager since admittedly the tenure of Sri.Joseph as Manager had expired on December 2, 2005. As mentioned earlier, the materials on record will prima facie indicate that elections were held on November 27, 2005. Pursuant to the said election Sri.Thomas C. Varghese was elected as the Manager. The

Departmental authorities have approved the said appointment. If the petitioners have got any grievance with regard to the question of validity or the very holding of the election, their remedy lies elsewhere. In any view of the matter I do not find any reason to exercise the discretionary jurisdiction vested in this Court under Article 226 of the Constitution in this issue. Therefore WP.14256/07 is liable to be dismissed. I do so. Consequently WP.13575/07 is allowed as prayed for.

15. WP.16097/07 is at the instance of some of the students who were admitted to the first year TTC course in the school under the educational agency in August 2006. Admittedly they have completed their first year course. This writ petition was filed in May 2007 when the first year examination was about to commence, because of the apprehension that the management was not likely to conduct the examination in the school since petitioners were given admission by the then Manager Sri.Joseph. According to the petitioners, the newly elected Manager, Sri.Thomas C Varghese, was not likely to hold the examination. But by an interim order dated May 29, 2007 this Court

had directed the Headmaster and the official respondents to conduct the first year examination for the petitioners along with other TTC students. Obviously the above direction had been complied with. Therefore no further orders are necessary in this writ petition. It is closed.

16. WP. No. 15199/07 is filed by a Lab Attender who claims that he had worked in the Higher Secondary School under the educational agency till July 24, 2006. The prayer is to issue a writ of mandamus or such other appropriate direction to the Regional Deputy Director, Higher Secondary Education, Kochi and the District Educational Officer, Muvattupuzha to approve his appointment and also to consider his claim for regularization as requested in Exts.P2 and P3. Petitioner has not produced the order of his appointment in the school; but according to him he had worked as Lab Attender till July 24, 2005. It is further contended by him that the management by Ext.P1 communication dated March 3, 2006 had put him on duty as night Watchman at the time when Secondary and Higher Secondary examinations were being conducted in the school.

17. Having heard learned counsel for the petitioner and having perused the materials on record, I am not satisfied that the petitioner is entitled to get any relief other than a direction to respondent No.2 to take a decision on Ext.P8 strictly on its merit and in accordance with law after affording an opportunity to the petitioner and the Manager to be heard. Ordered accordingly. This shall be done as expeditiously as possible.

18. Petitioner in WP.18811/2007 claims that she was appointed as a probationary teacher against a newly sanctioned post in the school under the educational agency with effect from November 21, 2005 till the vacancy exists. It is contended by the petitioner that the said vacancy is still available in the school. But the District Educational Officer had approved her appointment only for the period from November 21, 2005 till March 31, 2006. It is contended by the petitioner that she had again joined duty with effect from June 1, 2006 as directed by the Manager in Ext.P3 communication. Ext.P3 shows that P.J.Joseph had issued the said communication. Obviously Sri.Joseph was not the approved Manager at that point of time, since

his tenure had expired on December 3, 2005. The District Educational Officer had recorded such a finding in Ext.P4 order which is under challenge in this writ petition. Obviously petitioner has to take recourse to the statutory remedy available to her if she is aggrieved by Ext.P3 order. With that liberty reserved in favour of the petitioner, this writ petition is dismissed.

Resultantly W.P.No.13575/07 is allowed as prayed for. W.P.No.14256 and 18811 of 2007 are dismissed. W.P.No.16097/07 is closed and W.P.No.15199/07 is disposed of.

A.K. Basheer

Judge.

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